

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:07-cr-155-01

v.

HONORABLE PAUL L. MALONEY

ERVIN FANCE,

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Ervin Fance has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

The record reflects the defendant was originally sentenced on December 10, 2007 to 150 months imprisonment. On January 27, 2009, the defendant's sentence was reduced to 132 months, pursuant to a motion filed by the government to reduce sentence pursuant to Fed. R. Crim. P. 35. In March 2011, the government filed a second motion to reduce sentence pursuant

to Fed. R. Crim. P. 35, and the defendant's sentence was reduced to 120 months. The defendant, however, is not eligible for a sentence reduction pursuant to Amendment 750. He was sentenced as a career offender under U.S.S.G. § 4B1.1 and the amendment is of no assistance to him. The applicable guideline range has not been lowered as a result of the amendment to the Sentencing Guidelines. United States v. Baxter, No. 11-15664, 2012 WL 1192173 (11th Cir., Apr. 9, 2012); *see* United States v. Bridgewater, 606 F.3d 258, 260-01 (6th Cir. 2010); United States v. Washington, 584 F.3d 693, 700-01, (6th Cir. 2009). Accordingly,

IT IS HEREBY ORDERED that Defendant's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 138) is **DENIED**.

IT IS FURTHER ORDERED that Defendant's request for appointment of counsel is **DENIED**.

Date: May 2, 2013

/s/ Paul L. Maloney

Paul L. Maloney
Chief United States District Judge